

CHAPTER 11

CONVEYANCE OR ENCUMBRANCE OF HOMESTEAD BY A SPOUSE

S.F. 400

AN ACT relating to the conveyance or encumbrance of a homestead by a spouse.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 561.13, Code 2011, is amended to read as follows:

561.13 Conveyance or encumbrance.

1. A conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or a like instrument, or a power of attorney for the execution of the same or a like instrument, except as provided in subsection 3. However, when the homestead is conveyed or encumbered along with or in addition to other real estate, it is not necessary to particularly describe or set aside the tract of land constituting the homestead, whether the homestead is exclusively the subject of the contract or not, but the contract may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer.

2. If a spouse who holds only homestead rights and surviving spouse's statutory share in the homestead specifically relinquishes homestead rights in an instrument, including a power of attorney constituting the other spouse as the husband's or wife's attorney in fact, as provided in section 597.5, it is not necessary for the spouse to join in the granting clause of the same or a like instrument.

3. A conveyance or encumbrance or a contract to convey or encumber the homestead is not invalid under subsection 1 if any of the following apply:

a. The nonsigning spouse's interest is terminated by a decree of dissolution of marriage or other order of the court.

b. The nonsigning spouse's right of recovery is barred by section 614.15.

c. The encumbrance is a purchase money mortgage as defined in section 654.12B.

d. A court sitting in equity enters a decree holding that invalidating the conveyance or encumbrance or a contract to convey or encumber the homestead would, directly or indirectly, unjustly enrich the nonsigning spouse.

4. For the purposes of this section, "nonsigning spouse" means a spouse who has not executed a conveyance or encumbrance or a contract to convey or encumber the homestead, the same or a like instrument, or a power of attorney for the execution of the same or a like instrument.

Approved March 30, 2011